IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6835 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI THAKORBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BA SURTI for Petitioner

Mr. A.J.Desai for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. B.A. Surti for the petitioner and learned A.G.P. Mr. A.J. Desai, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 7-8-1999 passed by the Commissioner of Police, Surat (the respondent no.2) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served and supplied to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at Annexure "B" inter alia indicate that the petitioner is alleged to have been involved in a criminal case registered on 2-8-1999 at Athwa Lines Police Station vide CR no.218/99 for the offences made punishable under Sec.387, 506(2), 120-B, 451,& 323 of the Indian Penal Code and Sec.25(i)(c) of the Arms Act. That the petitioner was arrested on the same day and appears to have been released on bail vide order dt. 6-8-1999.

2.1 The grounds of detention further indicate that three witnesses on assurance of anonymity have given statements dated 4-8-1999, 5-8-1999 and 5-8-1999 regarding antisocial activities of the petitioner and have narrated the incidents allelged to have occurred on 2-5-1999, 13-6-1999 and 7-7-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order suffers from the vice of non application of mind inasmuch as the before passing the impugned order the detaining authority has failed to consider the aspect of claiming cancellation of bail granted to the petitioner in a pending case against him as available under Sec.437(5) of the Cr.P.C.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the

detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it appears that the respondent no.2 as detaining authority has failed to consider the aspect of less drastic remedy and there is nothing on record from which it could be inferred that the detaining authority has considered the said aspect before passing the impugned order. Consequently, the subjective satisfaction arrived at by the detaining authority having been vitiated, it is difficult to sustain the order.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 7-8-1999 passed by the Commissioner of Police, Surat (respondent no.2) is hereby quashed and set aside. The petitioner-detenu-Ishwarbhai alias Esu Raja Thakorebhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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